

USDOL/OALJ Reporter

[*Hasan v. Bechtel Corp.*](#), 93-ERA-40 (ALJ Dec. 9, 1994)

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DATE: December 9, 1994
CASE NO. 93-ERA-0040

IN THE MATTER OF

SYED HASAN,
COMPLAINANT,

v.

BECHTEL CORPORATION,
RESPONDENT.

Appearances:

Stephen Kohn, Esq.
For the Complainant

Richard K. Walker, Esq.
For the Respondent Bechtel
Power Corporation and
Bechtel Corporation

Before: PAUL H. TEITLER
Administrative Law Judge

***RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT***

This is a proceeding under the Energy Reorganization Act of 1974, as amended

("ERA"), set forth in 42 U.S.C §5851 and its implementing Regulations at 29

C.F.R. 24, *et seq.* The Claimant, Syed M.A. Hasan, commenced three actions (Case Nos. 94-ERA-21, 93-ERA-22, and 93-ERA-40 under Section 210/211 of the Energy Reorganization Act against Bechtel Corporation, and Bechtel

Power Corporation, individually and collectively as "Bechtel". the undersigned was assigned case 93-ERA-40. The case was scheduled for trial on May 2, 1994.

Preliminary Investigation and Decision

Mr. Hasan was notified by letter on June 22, 1993 by Kenneth Gilbert, District Director that:

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This letter is to notify you of the results of our actions in the above case. In a previous letter from this office, you were advised that your complaint was received on May 17, 1993. We enclosed copies of Regulations, 29 CFR Part 24 and the pertinent section of the Energy Reorganization Act with the letter.

As you are aware the Energy Reorganization Act was amended effective October 24, 1992 and the new amendments contained, among other changes, procedural changes in how the Department of Labor responds to and proceeds on Whistleblower complaints. Under the new amendments to the Act discussed above, Section 211 (3) (A), states:

`The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.'

Section 211 (3) (B) states:

`Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.'

Mr. Gilbert stated that their investigation revealed:

your In conducting our inquiries into the allegations raised in
April 13, 1993, complaint we determined from the information
contained

in your original complaint filed on May 17, 1993, by your attorney, Michael D. Kohn with this office that you did, in fact, establish a prima facie case of discrimination against you by the Bechtel Power Corporation concerning work you performed at their project site at the Browns Ferry Nuclear Power Station located near Athens, Alabama. However, this merely met the first requirement discussed

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above and we next offered the respondent,

Bechtel Power Corporation, an opportunity to demonstrate that the dismissal action taken against you would have been taken in absence of any 'protected activity'. On June 16, 1993, Mr. Donn C. Meindertsma, Counsel for Bechtel, faxed us the firm's response to your complaint along with numerous supporting documents and affidavits. The firm indicated they ranked all employees in the engineering department at Browns Ferry Nuclear Plant based on experience, relevant technical knowledge, flexibility and teamwork. You were ranked in position 52 out of 103 pipe support engineers in this ranking process. You were ranked highly in experience, knowledge and flexibility and received a lower ranking in productivity and teamwork. The firm indicated the ranking system used to determine which employees were laid off was also used in recalling employees to the job at Browns Ferry. They indicated that those engineers recalled prior to you were ranked higher with one exception. The engineer recalled with a lower ranking than you was badged for unescorted access in the plant, had worked in the small bore pipe group, and was experienced in doing 'walkdowns' at the site and thus was more qualified to perform the tasks at hand. The firm indicated that the performance review in question has not been finalized and even in its non-final form is not a downgraded evaluation. The firm feels the review in question is a fair and balanced review in that you were rated at 'meets requirements' or 'exceeds requirements' in every category. The firm did acknowledge that the review showed some areas where the firm wanted to work with you to improve your performance, but that this is done for all employees as a normal part of the review process. The firm indicated you worked

out of the Houston regional office as a grade 25 senior engineer and were ranked within this group. The firm indicated the 1993 Houston salary plan was dated December 16, 1992, at which time you were not working and no action was expected to be taken with regard to salary adjustments for you at that time. They indicated after an absence of only seven weeks you were recalled to Browns Ferry and a salary adjustment was then considered for you and effective March 29, 1993, you were given an appropriate salary adjustment of 5.6%. The firm shows that your salary is significantly higher than the average for grade

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25 pipe support engineers in the Houston office. The firm has also denied that they downgraded your force ranking or that your ranking has directly harmed your ability to obtain additional job offers from Bechtel Power. The firm indicates there were no openings at other

Bechtel nuclear projects during the period in question in that no assignments were being made at two project sites and the firm was actually releasing pipe support engineers from a third project. The firm indicates you are ranked 19th (tied with three others) out of 27 grade 25 pipe support engineers and nothing about this ranking suggests that it is discriminatory in any sense.

Mr. Gilbert concluded:

It is felt that Bechtel Corporation has demonstrated by clear and convincing evidence that the allegations raised by your May 17, 1993 complaint concerned actions that would have been taken absent

any protected activity on your part. This letter is to inform you that we will not proceed with an investigation of your complaint in that Bechtel Power met their obligation under Section 211 (3) (B) of the Energy Reorganization Act.

Mr. Hasan was advised that:

This letter is notification to you that, if you wish to appeal the above findings, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) calendar days of receipt of this letter, file your request for a hearing by telegram to:

The Chief Administrative Law Judge
U.S. Department of Labor

800 K Street, NW, Suite 400
Techworld Building
Washington, D.C. 20001-8002

Unless a telegram is received by the Chief Administrative Law Judge within the five-day period, this notice of determination will become the Final Order of the Secretary of Labor dismissing your complaint. By copy of this

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letter, Bechtel Power Corporation, is being advised of the determination in this case and the right to a hearing. A copy of this letter has also been sent to the Chief Administrative Law Judge with your complaint. If you decide to request a hearing, it will be necessary for you to send copies of the telegram to Bechtel Power Corporation and to me at 2015 Second Avenue North, Berry Building, Suite 301, Birmingham, AL. 35203, Telephone 204/731-1305. After I receive the copy of your request, appropriate preparations for the hearing can be made. If you have any questions, do not hesitate to call me.

It should be made clear to all parties that the U.S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Mr. Hasan timely filed an appeal of Mr. Gilbert's decision. On May 2, 1994, Mr. Hasan appeared in Decatur, Alabama, *pro se*. He testified in great detail relative to his allegations. On May 3, 1994, the parties decided that with the aid of the Court preliminary discussions would be held to explore the possibilities of settlement of his three claims, *supra*, against Bechtel. On May 4, 1994 at 2:10 p.m., Mr. Hasan and Bechtel entered into an oral and written settlement. The parties requested time to formalize their agreement which would be marked JX 1 and be incorporated into the Recommended Decision and Order Approving Settlement. On December 6, 1994 a detailed settlement agreement signed by the

Complainant and all counsel (designated as Joint Exhibit 1) was presented to the undersigned and the parties have requested that the attached settlement agreement be approved as follows:

I participated with the parties in their settlement discussions on May 2 and May, 3, 1994. Further Mr. Hasan sought and obtained the advice of Stephen M. Kohn, Esquire relative to the settlement. Mr. Hasan and his wife testified in open Court that Mr. Hasan had accepted the settlement, that it was arrived at without any duress, and after careful consideration of the issues. Thereafter, the parties executed JX 1 on December 6, 1994 and requested that I issue a Recommended Decision and Order approving the settlement. I have carefully considered the facts involved in this case, the settlement agreement JX 1, and the difficult legal and factual questions in dispute, as well as the criteria set forth in 42 U.S.C §5851 and its implementing Regulations at 29 C.F.R. 24, et seq. Upon careful evaluation of same, I conclude that

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the settlement is fair and in the best interest of the Complainant. Moreover, I find that the Settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute and the difficult legal and factual questions involved. Accordingly, I find that the settlement is fair, reasonable and adequate.

Pursuant to 42 U.S.C. § 5851 (2) (A) of the Energy Reorganization Act, as amended, I **"RECOMMEND"** that the **Secretary of Labor** approve the settlement.

PAUL H. TEITLER
Administrative Law Judge

Dated:
PHT:abr